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## Reimagining Criminal Justice: The Lasting Effects of the 3 Strikes Law and Proposition 20

Markie Flores

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# Reimagining Criminal Justice: The Lasting Effects of the 3 Strikes Law and Proposition 20

My uncle has spent 25 years in prison because of California's Three Strike's Law. Advocates of Proposition 20 want to keep him there longer.

By **Markie Flores** | October 28, 2020 at 06:56 PM

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*Markie Flores, J.D. Candidate, May 2021. Golden Gate University School of Law (Photo: Courtesy Photo)*

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*The Recorder has collaborated with students enrolled in Reimagining Criminal Justice, a seminar at Golden Gate University School of Law, to publish this series of student writings. This next generation of lawyers explore a broad range of topics touching on criminal and racial justice, and provide their perspectives and voices on myriad proposals for building a better, more just, system.*

This past summer, I visited my uncle in prison. Once inside the big open room filled with inmates, their families and correctional officers, I took a seat and waited for my uncle to be escorted out. As I waited, I looked around and saw an area designated for children with plastic play equipment and colorful wallpaper. It stood out from the monochrome grey of the rest of the room. A young inmate sat next to his toddler, holding his newborn in his arms.

In 1995, my uncle was sentenced to 25 years to life in prison under California's Three Strike's sentencing law, which he is still serving today. I was 3 years old when a judge sentenced him and have very few memories of him not being in prison. During my childhood, my mother was hesitant to talk to me about why my uncle was in prison. There was only one phrase that I gleaned from the hushed whispers of family members, "Three Strikes Law." Less than one year after its 1994 implementation, the "Three Strikes Law" was used to enhance my uncle's sentence from 25 years to an indeterminate sentence of up to life in prison.

In the 26 years since this law passed, most California voters have voted in favor of propositions that have worked to reduce mass incarceration by easing the effects of the Three Strike's Law, such as Proposition 36 in 2012 and 57 in 2016. Advocates of California's new voter initiative, Proposition 20, look to impose the same harsh, ineffective and costly effects of the original Three Strike's Law.

### **California's New Voter Initiative—Proposition 20**

Despite many people calling for cuts to police budgets this year, police unions have contributed more than half of the nearly \$4 million raised for Proposition 20's campaign deemed the "Reducing Crime and Keeping California Safe Act." The proposition would erode the impact of Proposition 36 and 57 and expand the list of crimes for which early release is **not an option**

**(<https://www.sfchronicle.com/politics/article/While-some-California-police-unions-promise-15348044.php>)**. Proposition 20 wishes to define **51 crimes**

**([https://ballotpedia.org/California\\_Proposition\\_20,\\_Criminal\\_Sentencing,\\_Parole,\\_and\\_DNA\\_Collection\\_Initiative\\_\(2016\)](https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2016)))** and sentence enhancements as violent. Listing them as violent will ensure they are excluded from the early release program **Proposition 57**

**([https://ballotpedia.org/California\\_Proposition\\_20,\\_Criminal\\_Sentencing,\\_Parole,\\_and\\_DNA\\_Collection\\_Initiative\\_\(2016\)](https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2016)))** enacted in 2016.

Its implementation would also require the parole review board to consider additional factors before deciding whether to release someone with a felony on parole, such as "marketable skills, attitude about the crime and mental condition, as well as the circumstances of the crimes **committed**

**(<https://www.oag.ca.gov/system/files/initiatives/pdfs/17-0044%20%28Reducing%20Crime%29.pdf>)**." These factors are used as additional

barriers to prevent inmates from being granted parole. Advocates of Proposition 20 are using nothing more than the same fearmongering "tough on crime" tactic used to promote the original Three Strikes Law to keep communities of color incarcerated.

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## The 1994 Passage of California's Three Strike's Law

Advocates of the Three Strikes law promoted it as the answer to keeping “murders, rapists and child molesters behind bars, **where they belong** (<https://law.stanford.edu/stanford-justice-advocacy-project/three-strikes-basics/>).” However, the majority of inmates sentenced under the law are serving sentences for **nonviolent** (<https://law.stanford.edu/stanford-justice-advocacy-project/three-strikes-basics/>) crimes today. During the first 10 years following the enactment of Three Strikes, courts applying the Three Strikes Law sentenced over **80,000 second strikers and 7,500 third strikers** ([https://lao.ca.gov/2005/3\\_strikes/3\\_strikes\\_102005.htm](https://lao.ca.gov/2005/3_strikes/3_strikes_102005.htm)) to state prison. The law required a sentence of **at least 25 years to life** (<https://www.courts.ca.gov/20142.htm>) if a defendant was convicted of any felony and had two or more prior strikes.

Prior strikes could be almost any crime defined as “**serious or violent** (<https://law.stanford.edu/stanford-justice-advocacy-project/three-strikes-basics/>)” by the California Penal Code. After its enactment, some California counties used “minor felonies, and even misdemeanors elevated to felonies” as third strike’s **resulting in up to life in prison** (<https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=235543>). Since the third strike need not be serious nor violent, some individuals have been given life sentences for crimes as minor as “**stealing one dollar in loose change from a parked car** (<https://law.stanford.edu/stanford-justice-advocacy-project/three-strikes-basics/>).” Since its enactment, there have been modifications to some elements of the Three Strikes Law.

## The 2012 Passage of Proposition 36

In 2012, **69.3%** ([https://ballotpedia.org/California\\_Proposition\\_36,\\_Changes\\_in\\_the\\_%22Three\\_Strikes%22\\_Law\\_\(2012\)\)](https://ballotpedia.org/California_Proposition_36,_Changes_in_the_%22Three_Strikes%22_Law_(2012))) of Californians voted in favor of Proposition 36. It was the first voter initiative since the **Civil War** (<https://law.stanford.edu/stanford-justice-advocacy-project/three-strikes-basics/>) to reduce the sentences of incarcerated individuals. Proposition 36 revised the three strikes law to impose a life sentence only when the third felony conviction is **serious or violent** ([https://ballotpedia.org/California\\_Proposition\\_36,\\_Changes\\_in\\_the\\_%22Three\\_Strikes%22\\_Law\\_\(2012\)\)](https://ballotpedia.org/California_Proposition_36,_Changes_in_the_%22Three_Strikes%22_Law_(2012))). It also authorized resentencing for offenders serving life sentences if their third strike conviction was not serious or violent, and if the judge determines that the resentence does not pose an **unreasonable risk to public safety** ([https://ballotpedia.org/California\\_Proposition\\_36,\\_Changes\\_in\\_the\\_%22Three\\_Strikes%22\\_Law\\_\(2012\)\)](https://ballotpedia.org/California_Proposition_36,_Changes_in_the_%22Three_Strikes%22_Law_(2012))). Although a significant win for opponents of The Three Strikes law, Proposition 36 did not change my uncle’s sentence. Despite my uncle being a nonviolent offender, his third “strike” is considered “serious” under the California Penal Code.

## The 2016 Passage of Proposition 57

In 2016, 64% of Californians voted in favor of Proposition 57. This proposition, among other things, created a good behavior credit program for current nonviolent offenders currently in prison. Specifically, it amended **Article 1 of the U.S. Constitution** ([https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?)

[lawCode=CONS&article=1](#)), allowing “any person convicted of a nonviolent felony offense” eligible for parole consideration “after completing the full term of his or her primary offense.”

As of June 2020, my uncle has served the required minimum of 25 years of his original sentence. Since he has now served his minimum sentence, my uncle became eligible for a parole suitability hearing as an indeterminately sentenced nonviolent offender. His parole suitability hearing is set for December 2021; however, Proposition 20 may prevent him from reuniting with my family. To date, it has cost about **\$2.1 million** ([https://lao.ca.gov/policyareas/cj/6\\_cj\\_inmatecost](https://lao.ca.gov/policyareas/cj/6_cj_inmatecost)) to keep my uncle in prison, money that could have been spent towards actual rehabilitation, and still have money left over for other much needed public services.

This summer, as I waited for my uncle to sit down at the visitation table, I noticed the toddler sitting next to the young inmate in the designated children's area looked about the same age as I was when my uncle was sentenced. I could not help but wonder if the next time that toddler would see her father free, she would be my age. California voters will potentially be determining the fate of my uncle, that toddler, and thousands more Nov. 3. Vote no on Proposition 20.

*Markie Flores is a law student at Golden Gate University School of Law who plans to help underrepresented communities move towards equality as a lawyer.*

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